

DECISION



29160

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-214631

DATE: August 24, 1984

MATTER OF: Memphis Defense Depot - Employee's
Claim for Backpay

DIGEST:

Agency placed employee on involuntary leave following fitness-for-duty examination and filed for her disability retirement. After disability retirement was denied by Office of Personnel Management (OPM), employee claimed backpay for period of involuntary leave and leave without pay. Claim is denied since OPM did not overturn medical evidence submitted by agency and agency action was based on competent medical evidence.

The issue in this decision involves an employee's claim for backpay where the agency placed her on involuntary leave pending action on an agency-filed petition for disability retirement. We disallow her claim for backpay. Even though the agency application for disability retirement was denied by the Office of Personnel Management (OPM), the medical findings submitted by the agency were not overturned by OPM, and the agency's action in placing her on involuntary leave was based on competent medical evidence.

This is in response to a request from R. G. Bordley, Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency (DLA). The request concerns the backpay claim of a DLA employee stationed at the Defense Depot in Memphis, Tennessee.

The agency report states that during 1982 the employee displayed erratic behavior problems, was non-productive, and on several occasions totally disrupted her office. She was ordered to undergo a fitness-for-duty psychological examination which was performed by Dr. Nora V. Reyes, who had previously treated the employee. The findings of this evaluation were reviewed by the Depot Medical Officer, Dr. E.F. McDaniel, and he determined on December 7, 1982,

84
029897

that her continued duty status would be detrimental to the interest of the Government, herself, and fellow workers, based on her erratic behavior and her refusal to follow prescribed medication. See 5 C.F.R. § 831.1206 (1984). Therefore, the employee was placed on involuntary leave.

The agency initiated a disability retirement action on behalf of the employee, but this action was denied by OPM, by letter dated September 27, 1983, on the basis that the evidence presented had failed to show her total disability for useful and efficient service in her position. The employee returned to work on November 7, 1983, after the agency received documentation from her attending physician that she was ready to accept the responsibility for her medication.

The employee claims backpay from February 13, 1983, when her leave was exhausted, to November 4, 1983, on the grounds that there was insufficient evidence to support the disability claim. The agency report states that its actions were consistent with our prior decisions.

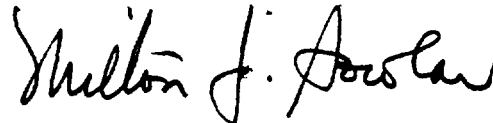
Our decisions have held that agencies may place employees on involuntary leave, pending a decision from OPM on an agency-filed application for disability retirement, when administrative officers determine, on the basis of competent medical evidence, that the employees are incapacitated for the performance of their assigned duties. David G. Reyes, B-206237, August 16, 1982; and Connie R. Cecalas, B-184522, April 21, 1977, and March 16, 1976. That action does not constitute an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. § 5596 (1982). See Isma B. Saloshin, B-205950, January 10, 1984, 63 Comp. Gen. 156, and decisions cited therein.

Although OPM subsequently determines that the employee is not eligible for a disability retirement, we have held that such a finding does not provide a basis for backpay unless the earlier medical evidence was overturned or the determination to place the employee on involuntary leave was not based on competent medical evidence. Reyes, and Cecalas, cited above.

There is no indication in the record before us that OPM overturned the medical evidence submitted by the agency. See Cecalas, cited above. Furthermore, the record indicates that the decision to place the employee on involuntary leave

was based on competent medical evidence obtained through a fitness-for-duty examination. Therefore, her situation does not fall within those decisions outlined above which have allowed backpay.

Accordingly, we hold that the employee's claim is disallowed.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States